

## HOUSE BILL NO. 486

INTRODUCED BY MACLAREN, REINHART, ZINKE, BRUEGGEMAN, LAIBLE, HAWKS, GILLAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~ANNEXATION AND SUBDIVISION LAND~~  
~~USE LAWS; CLARIFYING SUBDIVISION REVIEW FOR CONDOMINIUMS; INCLUDING SAND AND GRAVEL~~  
~~RESOURCES AMONG THE ITEMS THAT MUST BE MAPPED IN A GROWTH POLICY; CHANGING PETITION~~  
AND PROTEST DEFINITIONS FOR PLANNING AND ZONING DISTRICTS; REVISING THE MEMBERSHIP OF  
PLANNING AND ZONING COMMISSIONS; ALLOWING A COUNTY COMMISSION TO VOID A PLANNING AND  
ZONING DISTRICT UNDER A CERTAIN CONDITION; ~~PROVIDING PENALTIES FOR VIOLATION OF CERTAIN~~  
~~ZONING REGULATIONS; REQUIRING A COUNTY TO ATTEMPT TO OBTAIN COMPLIANCE WITH ZONING~~  
~~REGULATIONS BEFORE FILING A COMPLAINT; REVISING PUBLIC NOTICE REQUIREMENTS FOR ZONING~~  
~~AND REQUIRING PUBLIC NOTICE FOR INTERIM ZONING; REQUIRING A TIME LIMIT FOR PROVIDING A~~  
WRITTEN DECISION FOR A SUBDIVISION APPLICATION; ALLOWING A GOVERNING BODY TO REQUIRE  
THAT IMPROVEMENTS TO PROTECT PUBLIC HEALTH AND SAFETY BE COMPLETED BEFORE  
ALLOWING BONDING OR OTHER REASONABLE SECURITY; ~~PROVIDING THAT A PARK DEDICATION MAY~~  
~~NOT BE REQUIRED FOR A FIRST MINOR SUBDIVISION FROM A TRACT OF RECORD; AMENDING~~  
SECTIONS ~~7-2-4303, 7-2-4503, 7-2-4608~~, 70-23-301, 76-1-601, 76-2-101, 76-2-102, 76-2-107, 76-2-113,  
76-2-202, 76-2-203, 76-2-205, 76-2-206, 76-2-210, 76-2-304, 76-3-207, 76-3-504, 76-3-506, 76-3-507, 76-3-510,  
76-3-608, 76-3-609, 76-3-610, 76-3-620, 76-3-621, AND 76-3-625, MCA; REPEALING SECTION 76-3-210, MCA;  
AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 7-2-4303, MCA, is amended to read:~~~~"7-2-4303. Restrictions on annexation power. Except as provided in 7-2-4314(1)(d), or when an  
annexation is in accordance with a growth policy adopted by the municipality, land used for industrial, railroad,  
or manufacturing purposes may not be included in a city or town under the provisions of 7-2-4311 through  
7-2-4314 and 7-2-4325 without the written consent of the owners of the land."~~~~Section 2. Section 7-2-4503, MCA, is amended to read:~~

1 ~~—————"7-2-4503. Restrictions on annexation power. Land shall Except when annexation is in accordance~~  
2 ~~with a growth policy adopted by the municipality, land may not be annexed under this part whenever the land is~~  
3 ~~used:~~

4 ~~————(1) for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose;~~  
5 ~~or~~

6 ~~————(2) for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing~~  
7 ~~field, a cemetery, or a place for public or private outdoor entertainment or any purpose incident thereto."~~

8  
9 ~~————Section 3. Section 7-2-4608, MCA, is amended to read:~~

10 ~~————"7-2-4608. Restrictions on annexation power. (1) No territory Territory which, at the time such a~~  
11 ~~petition for such a proposed annexation is presented to such a council or legislative body, forms any part of any~~  
12 ~~incorporated city or town shall may not be annexed under the provisions of this part.~~

13 ~~————(2) No Except as provided in 7-2-4503, a parcel of land which, at the time such a petition for such a~~  
14 ~~proposed annexation is presented to such a council or legislative body, is used in whole or in part for agricultural;~~  
15 ~~mining, smelting, refining, transportation, or any industrial or manufacturing purpose or any purpose incident~~  
16 ~~thereto shall may not be annexed under the provisions of this part."~~

17  
18 **Section 1.** Section 70-23-301, MCA, is amended to read:

19 **"70-23-301. Contents of declaration.** A declaration shall must contain:

20 (1) a description of the land, whether leased or in fee simple, on which the building is located or is to  
21 be located;

22 (2) the name by which the property shall will be known and a general description of the building, including  
23 the number of stories and basements, the number of units, and the principal materials of which it is constructed;

24 (3) the unit designation, location, approximate area of each unit, and any other data necessary for proper  
25 identification;

26 (4) a description of the general common elements and the percentage of the interest of each unit owner  
27 therein in the common elements;

28 (5) a description of the limited common elements, if any, stating to which units their use is reserved and  
29 in what percentage;

30 (6) a statement of the use for which the building and each of the units is intended;

(7) the name of a person to receive service of process in the cases provided in 70-23-901 and the residence or place of business of ~~such~~ the person which ~~shall~~ must be within the county in which the property is located;

(8) an exhibit containing certification from the applicable local government that the condominiums are either exempt from review under 76-3-203 or have been approved following review under Title 76, chapter 3, parts 5 and 6; and

(9) any other details regarding the property that the person executing the declaration considers desirable."

**SECTION 2. SECTION 76-1-601, MCA, IS AMENDED TO READ:**

**"76-1-601. Growth policy -- contents.** (1) A growth policy may cover all or part of the jurisdictional area.

(2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full discretion of the governing body.

(3) A growth policy must include:

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; ~~and~~

(viii) sand and gravel resources; and

~~(viii)~~(ix) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

- 1 (iii) housing needs;
- 2 (iv) economic conditions;
- 3 (v) local services;
- 4 (vi) natural resources; and
- 5 (vii) other elements proposed by the planning board and adopted by the governing bodies;
- 6 (d) a description of policies, regulations, and other measures to be implemented in order to achieve the
- 7 goals and objectives established pursuant to subsection (3)(a);
- 8 (e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking
- 9 water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities,
- 10 roads, and bridges;
- 11 (f) an implementation strategy that includes:
- 12 (i) a timetable for implementing the growth policy;
- 13 (ii) a list of conditions that will lead to a revision of the growth policy; and
- 14 (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if
- 15 necessary;
- 16 (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that
- 17 explains:
- 18 (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the
- 19 county in which the city or town is located on matters related to the growth policy;
- 20 (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and
- 21 towns located within the county's boundaries on matters related to the growth policy;
- 22 (h) a statement explaining how the governing bodies will:
- 23 (i) define the criteria in 76-3-608(3)(a); and
- 24 (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in
- 25 76-3-608(3)(a);
- 26 (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted; and
- 27 (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or
- 28 not there is a need to:
- 29 (i) delineate the wildland-urban interface; and
- 30 (ii) adopt regulations requiring:

1 (A) defensible space around structures;

2 (B) adequate ingress and egress to and from structures and developments to facilitate fire suppression  
3 activities; and

4 (C) adequate water supply for fire protection.

5 (4) A growth policy may:

6 (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth  
7 policy.

8 (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

9 (c) establish an infrastructure plan that, at a minimum, includes:

10 (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential,  
11 commercial, and industrial units over the next 20 years;

12 (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place outside  
13 of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate  
14 infrastructure planning with the county or counties where growth is likely to take place;

15 (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities  
16 that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;

17 (iv) for cities, a land use map showing where projected growth will be guided and at what densities within  
18 city boundaries;

19 (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to cities  
20 showing where projected growth will be guided and at what densities;

21 (vi) using maps and text, a description of existing and future public facilities necessary to efficiently serve  
22 projected development and densities within infrastructure planning areas, including, whenever feasible, extending  
23 interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other municipal  
24 public facilities throughout the infrastructure planning area. For the purposes of this subsection (4)(c)(vi), public  
25 facilities include but are not limited to drinking water treatment and distribution facilities, sewer systems,  
26 wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public access  
27 areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency services;

28 (vii) a description of proposed land use management techniques and incentives that will be adopted to  
29 promote development within cities and in an infrastructure planning area, including land use management  
30 techniques and incentives that address issues of housing affordability;

(viii) a description of how and where projected development inside municipal boundaries for cities and inside designated joint infrastructure planning areas for cities and counties could adversely impact:

(A) threatened or endangered wildlife and critical wildlife habitat and corridors;

(B) water available to agricultural water users and facilities;

(C) the ability of public facilities, including schools, to safely and efficiently service current residents and future growth;

(D) a local government's ability to provide adequate local services, including but not limited to emergency, fire, and police protection;

(E) the safety of people and property due to threats to public health and safety, including but not limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

(F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel resources, streams, rivers, lakes, wetlands, and ground water; and

(G) agricultural lands and agricultural production; and

(ix) a description of measures, including land use management techniques and incentives, that will be adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

(5) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

**Section 3.** Section 76-2-101, MCA, is amended to read:

**"76-2-101. Planning and zoning commission and district.** (1) Subject to the provisions of subsection (5), whenever the public interest or convenience may require and upon petition of 60% of the affected ~~freeholders~~ real property owners in the proposed district, the board of county commissioners may create a planning and zoning district and appoint a planning and zoning commission consisting of seven members.

(2) A planning and zoning district may not be created in an area that has been zoned by an incorporated city pursuant to 76-2-310 and 76-2-311.

(3) For the purposes of this part, the word "district" means any area that consists of not less than 40 acres.

(4) Except as provided in subsection (5), an action challenging the creation of a planning and zoning district must begin within ~~5 years~~ 60 days 6 MONTHS after the date of the order by the board of county commissioners creating the district.

(5) If ~~freeholders~~ real property owners representing 50% of the titled property ownership in the district protest the establishment of the district within 30 days of its creation, the board of county commissioners may not create the district. An area included in a district protested under this subsection may not be included in a zoning district petition under this section for a period of 1 year."

**Section 4.** Section 76-2-102, MCA, is amended to read:

**"76-2-102. Organization and operation of commission.** (1) The planning and zoning commission consists of ~~the~~ three county commissioners, either the county surveyor or the county clerk and recorder, two citizen members, each of whom resides in a different planning and zoning district; or, if only one district exists in a county or is proposed, both from that district, and a county official appointed by the county commissioners. The citizen members must be appointed by the board of county commissioners to 2-year staggered terms, with one member initially appointed to a 2-year term and the remaining member initially appointed to a 1-year term. Members of the commission shall serve without compensation other than reimbursement for authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) Subject to 15-10-420, the finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the commission's members must be paid from a levy on the taxable value of all taxable property within the district."

**Section 5.** Section 76-2-107, MCA, is amended to read:

**"76-2-107. Preparation of resolutions and other materials.** (1) The planning and zoning commission may, for the benefit and welfare of the county, prepare and submit to the board of county commissioners drafts of resolutions for the purpose of carrying out the development districts or any part ~~thereof~~ of the development districts previously adopted by the commission, including zoning and land use regulations, the making of official maps, and the preservation of the integrity ~~thereof~~ of the development districts and the official maps and including procedure for appeals from decisions made under the authority of ~~such~~ the regulations and regulations for the conservation of the natural resources of the county. The board of county commissioners is ~~hereby~~ authorized to adopt ~~such~~ these resolutions.

(2) Notwithstanding the provisions of 76-2-104 and subsection (1) of this section, if the planning and zoning commission is unable to make and adopt a development pattern or to adopt a development district, the board of county commissioners may adopt a resolution to void a planning and zoning district created pursuant to 76-2-101."

**NEW SECTION. SECTION 6. VIOLATIONS AND PENALTIES.** A VIOLATION OF THIS PART OR OF A RESOLUTION ADOPTED PURSUANT TO THIS PART IS A MISDEMEANOR AND IS PUNISHABLE BY A FINE OF UP TO \$500 OR BY IMPRISONMENT IN THE COUNTY JAIL FOR A TERM NOT EXCEEDING 6 MONTHS, OR BOTH. THE VIOLATION IS AN ABSOLUTE LIABILITY OFFENSE AS PROVIDED FOR IN 45-2-104.

**SECTION 7. SECTION 76-2-113, MCA, IS AMENDED TO READ:**

**"76-2-113. Enforcement of zoning provisions.** (1) If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if any building, structure, or land is used in violation of this part or of any resolution adopted under this part, the county, in addition to other remedies, may take any appropriate action or begin proceedings to:

(1)(a) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2)(b) restrain, correct, or abate a violation;

(3)(c) prevent the occupancy of a building, structure, or land; or

(4)(d) prevent any illegal act, conduct, business, or use in or near the premises.

(2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for a violation of this part that is subject to the penalties under [section 6]."

**Section 8. Section 76-2-202, MCA, is amended to read:**

**"76-2-202. Establishment of zoning districts -- regulations.** (1) (a) Within the unincorporated portions of a jurisdictional area that has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, and for the purposes provided in 76-2-201, the board of county commissioners may by resolution ~~establish zoning districts and zoning regulations for all or part of the jurisdictional area~~ establish zoning regulations for a part or all of the jurisdictional area or divide the county into zoning districts with zoning regulations that are considered best suited to carry out the purposes of this part. By establishing zoning



1 regulations, the board may regulate the density, erection, construction, reconstruction, alteration, repair, location,  
2 or use of buildings or structures or the use of land.

3 (b) An action challenging the creation of a zoning district or adoption of zoning regulations must be  
4 commenced within ~~5 years~~ 60 days 6 MONTHS after the date of the order by the board of county commissioners  
5 creating the district or adopting the regulations.

6 ~~(2) Within some zoning districts, it is lawful and within others it is unlawful to erect, construct, alter, or~~  
7 ~~maintain certain buildings or to carry on certain trades, industries, or callings.~~

8 ~~(3)(2)~~ In a proceeding for a permit or variance to place manufactured housing within a residential zoning  
9 district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect  
10 property values of conventional housing.

11 ~~(4) Within each district the height and bulk of future buildings and the area of the yards, courts, and other~~  
12 ~~open spaces and the future uses of the land or buildings must be limited and future building setback lines must~~  
13 ~~be established.~~

14 ~~(5)(3) All regulations must be uniform for each class or kind of buildings throughout a district, but the~~ The  
15 regulations in one district may differ from those in other districts.

16 ~~(6)(4)~~ As used in this section, "manufactured housing" means a ~~single-family~~ dwelling for a single  
17 household, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at  
18 least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as  
19 defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing  
20 standards of the United States department of housing and urban development at the time of its production. A  
21 manufactured home does not include a mobile home or housetrailer, as defined in 15-1-101.

22 ~~(7)(5) Nothing contained in this~~ This section may not be construed to limit conditions imposed in historic  
23 districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title  
24 70, chapter 17, part 2."

25  
26 **Section 9.** Section 76-2-203, MCA, is amended to read:

27 **"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

28 (a) made in accordance with the growth policy ~~or a master plan, as provided for in 76-2-201(2);~~ and

29 (b) designed to:

30 ~~(i) lessen congestion in the streets;~~

1           ~~(ii)(i)~~ secure safety from fire, ~~panic~~, and other dangers;  
 2           ~~(iii)(ii)~~ promote public health, public safety, and general welfare; and  
 3           ~~(iv)~~ provide adequate light and air;  
 4           ~~(v)~~ prevent the overcrowding of land;  
 5           ~~(vi)~~ avoid undue concentration of population; and  
 6           ~~(vii)(iii)~~ facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other  
 7 public requirements.

8           (2) ~~Zoning regulations must be made with reasonable consideration, among other things, to~~ In the  
 9 adoption of zoning regulations, the board of county commissioners shall consider:

10           (a) reasonable provision of adequate light and air;  
 11           (b) the effect on motorized and nonmotorized transportation systems;  
 12           (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the areas  
 13 around municipalities;  
 14           (d) the character of the district and its peculiar suitability for particular uses; and  
 15           (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land  
 16 throughout the jurisdictional area.

17           (3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of  
 18 ~~the municipality within the jurisdictional area~~ nearby municipalities."

19  
 20           **Section 10.** Section 76-2-205, MCA, is amended to read:

21           **"76-2-205. Procedure for adoption of regulations and boundaries.** The board of county  
 22 commissioners shall observe the following procedures in the establishment or revision of boundaries for zoning  
 23 districts and in the adoption or amendment of zoning regulations:

24           (1) Notice of a public hearing on the proposed zoning district boundaries and of regulations for the zoning  
 25 district ~~must be published once a week for 2 weeks in a newspaper of general circulation within the county. The~~  
 26 ~~notice must:~~

27           (A) state:

28           ~~(a)(i)~~ the boundaries of the proposed district;

29           ~~(b)(ii)~~ the general character of the proposed zoning regulations;

30           ~~(c)(iii)~~ the time and place of the public hearing;

1           ~~(d)(iv)~~ that the proposed zoning regulations are on file for public inspection at the office of the county clerk  
2 and recorder;

3           (B) BE POSTED NOT LESS THAN 45 DAYS BEFORE THE PUBLIC HEARING IN AT LEAST FIVE PUBLIC PLACES WITHIN  
4 THE PROPOSED DISTRICT; AND

5           (C) BE PUBLISHED ONCE A WEEK FOR 2 WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE COUNTY.

6           (2) At the public hearing, the board of county commissioners shall give the public an opportunity to be  
7 heard regarding the proposed zoning district and regulations.

8           (3) After the public hearing, the board of county commissioners shall review the proposals of the planning  
9 board and shall make any revisions or amendments that it determines to be proper.

10          (4) The board of county commissioners may pass a resolution of intention to create a zoning district and  
11 to adopt zoning regulations for the district.

12          (5) The board of county commissioners shall publish notice of passage of the resolution of intention once  
13 a week for 2 weeks in a newspaper of general circulation within the county. The notice must state:

14           (a) the boundaries of the proposed district;

15           (b) the general character of the proposed zoning regulations;

16           (c) that the proposed zoning regulations are on file for public inspection at the office of the county clerk  
17 and recorder;

18           (d) that for 30 days after first publication of this notice, the board of county commissioners will receive  
19 written protests to the creation of the zoning district or to the zoning regulations from persons owning real property  
20 within the district whose names appear on the last-completed assessment roll of the county.

21          (6) Within 30 days after the expiration of the protest period, the board of county commissioners may in  
22 its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for the district.  
23 However, if 40% of the ~~freeholders~~ real property owners within the district whose names appear on the  
24 last-completed assessment roll or if ~~freeholders~~ real property owners representing 50% of the titled property  
25 ownership whose property is taxed for agricultural purposes under 15-7-202 or whose property is taxed as forest  
26 land under Title 15, chapter 44, part 1, have protested the establishment of the district or adoption of the  
27 regulations, the board of county commissioners may not adopt the resolution and a further zoning resolution may  
28 not be proposed for the district for a period of 1 year."

29  
30          **SECTION 11. SECTION 76-2-206, MCA, IS AMENDED TO READ:**

1       **"76-2-206. Interim zoning map or regulation.** (1) ~~The~~ Subject to subsection (3), the board of county  
2 commissioners may ~~adopt~~ establish an interim zoning ~~map district~~ or interim regulation as an emergency measure  
3 in order to promote the public health, safety, morals, and general welfare if:

4           (a) the purpose of the interim zoning ~~map district~~ or interim regulation is to classify and regulate those  
5 uses and related matters that constitute the emergency; and

6           (b) the county:

7           (i) is conducting or in good faith intends to conduct studies within a reasonable time; or

8           (ii) has held or is holding a hearing for the purpose of considering any of the following:

9           (A) a growth policy;

10          (B) zoning regulations; or

11          (C) a revision to a growth policy, to a master plan, as provided for in 76-1-604(6) and 76-2-201(2), or  
12 to zoning regulations pursuant to this part.

13          (2) ~~An interim~~ A resolution for an interim zoning district or interim regulation must be limited to 1 year  
14 from the date it becomes effective. ~~The~~ Subject to subsection (3)(c), the board of county commissioners may  
15 extend the ~~interim~~ resolution for 1 year, but not more than one extension may be made.

16          (3) The board of county commissioners shall observe the following procedures in the establishment of  
17 an interim zoning district or interim regulation:

18          (a) Notice of a public hearing on the proposed interim zoning district boundaries or of the interim  
19 regulation must be published once a week for 2 weeks in a newspaper of general circulation within the county.

20 The notice must state:

21           (i) the boundaries of the proposed district;

22           (ii) the specific emergency or exigent circumstance compelling the establishment of the proposed interim  
23 zoning district or interim regulation;

24           (iii) the general character of the proposed interim zoning district or interim regulation;

25           (iv) the time and place of the public hearing; and

26           (v) that the proposed interim zoning district or interim regulation is on file for public inspection at the office  
27 of the county clerk and recorder.

28          (b) At the public hearing, the board of county commissioners shall give the public an opportunity to be  
29 heard regarding the proposed establishment of an interim zoning district or interim regulation.

30          (c) After the hearing, the board of county commissioners may adopt a resolution to establish an interim

1 zoning district or interim regulation."

2

3 **SECTION 12. SECTION 76-2-210, MCA, IS AMENDED TO READ:**

4 **"76-2-210. Enforcement of zoning provisions.** (1) ~~In case~~ If any building or structure is erected,  
5 constructed, reconstructed, altered, repaired, converted, or maintained or any building, structure, or land is used  
6 in violation of this part or of any resolution ~~made under authority conferred hereby, the proper authorities of~~  
7 adopted under this part, the county, in addition to other remedies, may institute any appropriate action or  
8 proceedings to:

9 (a) prevent ~~such the~~ unlawful erection, construction, reconstruction, alteration, repair, conversion,  
10 maintenance, or use; ~~to~~

11 (b) restrain, correct, or abate ~~such a~~ violation; ~~to~~

12 (c) prevent the occupancy of ~~such the~~ building, structure, or land; or ~~to~~

13 (d) prevent any illegal act, conduct, business, or use in or ~~about such~~ near the premises.

14 (2) The county shall attempt to obtain voluntary compliance at least 30 days before filing a complaint for  
15 a violation of this part that is subject to the penalties under 76-2-211.

16 ~~(2)(3)~~ (3) The board of county commissioners may appoint enforcing officers to supervise and enforce the  
17 provisions of the zoning resolutions."

18

19 **Section 13.** Section 76-2-304, MCA, is amended to read:

20 **"76-2-304. Purposes of zoning Criteria and guidelines for zoning regulations.** (1) Zoning regulations  
21 must be:

22 (a) ~~except as provided in subsection (3);~~ made in accordance with a growth policy; and

23 (b) designed to:

24 ~~(i) lessen congestion in the streets;~~

25 ~~(ii)(i)~~ (i) secure safety from fire, ~~panic~~, and other dangers;

26 ~~(iii)(ii)~~ (ii) promote public health, public safety, and the general welfare; and

27 ~~(iv) provide adequate light and air;~~

28 ~~—— (v) prevent the overcrowding of land;~~

29 ~~—— (vi) avoid undue concentration of population; and~~

30 ~~—— (vii)(iii)~~ (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other

1 public requirements.

2 ~~(2) Zoning regulations must be made with reasonable consideration, among other things, to~~ In the  
3 adoption of zoning regulations, the municipal governing body shall consider:

4 (a) reasonable provision of adequate light and air;

5 (b) the effect on motorized and nonmotorized transportation systems;

6 (c) promotion of compatible urban growth;

7 (d) the character of the district and its peculiar suitability for particular uses; and

8 (e) with a view to conserving the value of buildings and encouraging the most appropriate use of land  
9 throughout the municipality jurisdictional area.

10 ~~(3) Until October 1, 2006, zoning regulations may be adopted or revised in accordance with a master~~  
11 ~~plan that was adopted pursuant to Title 76, chapter 1, before October 1, 1999."~~

12  
13 **Section 14.** Section 76-3-207, MCA, is amended to read:

14 **"76-3-207. Divisions or aggregations of land exempted from review but subject to survey**  
15 **requirements and zoning regulations -- exceptions -- fees for examination of division.** (1) Except as  
16 provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter,  
17 the following divisions or aggregations of land are not subdivisions under this chapter but are subject to the  
18 surveying requirements of 76-3-401 for divisions or aggregations of land ~~not amounting to other than~~ subdivisions  
19 and are subject to applicable zoning regulations adopted under Title 76, chapter 2:

20 (a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines  
21 between adjoining properties;

22 (b) divisions made outside of platted subdivisions for the purpose of a single gift or sale in each county  
23 to each member of the landowner's immediate family;

24 (c) divisions made outside of platted subdivisions by gift, sale, or agreement to buy and sell in which the  
25 parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the  
26 governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

27 (d) for five or fewer lots within a platted subdivision, THE relocation of common boundaries ~~and the~~  
28 ~~aggregation of lots; and~~

29 (e) divisions made for the purpose of relocating a common boundary line between a single lot within a  
30 platted subdivision and adjoining land outside a platted subdivision. A restriction or requirement on the original

1   platted lot or original unplatted parcel continues to apply to those areas.

2           (f) aggregation of parcels or lots when a certificate of survey or subdivision plat shows that the  
3 boundaries of the original parcels have been eliminated and the boundaries of a larger aggregate parcel are  
4 established. A restriction or requirement on the original platted lot or original unplatted parcel continues to apply  
5 to those areas.

6           (2) Notwithstanding the provisions of subsection (1):

7           (a) within a platted subdivision filed with the county clerk and recorder, a division, redesign, or  
8 rearrangement of lots that results in an increase in the number of lots or that redesigns or rearranges six or more  
9 lots must be reviewed and approved by the governing body and before an amended plat ~~must~~ may be filed with  
10 the county clerk and recorder;

11           (b) a change in use of the land exempted under subsection (1)(c) for anything other than agricultural  
12 purposes subjects the division to ~~the provisions~~ review under parts 5 and 6 of this chapter.

13           (3) (a) Subject to subsection (3)(b), a division of land may not be made under this section unless the  
14 county treasurer has certified that all real property taxes and special assessments assessed and levied on the  
15 land to be divided have been paid.

16           (b) (i) If a division of land includes centrally assessed property and the property taxes applicable to the  
17 division of land are not specifically identified in the tax assessment, the department of revenue shall prorate the  
18 taxes applicable to the land being divided on a reasonable basis. The owner of the centrally assessed property  
19 shall ensure that the prorated real property taxes and special assessments are paid on the land being sold before  
20 the division of land is made.

21           (ii) The county treasurer may accept the amount of the tax prorated pursuant to this subsection (3)(b) as  
22 a partial payment of the total tax that is due.

23           (4) The governing body may examine a division or aggregation of land to determine whether or not the  
24 requirements of this chapter apply to the division or aggregation and may establish reasonable fees, not to  
25 exceed \$200, for the examination."

26  
27       **Section 15.** Section 76-3-504, MCA, is amended to read:

28       **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this  
29 chapter must, at a minimum:

30       (a) list the materials that must be included in a subdivision application in order for the application to be

1 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

2 (b) except as provided in ~~76-3-240~~, 76-3-509, ~~or 76-3-609~~, or 76-3-616, require the subdivider to submit  
3 to the governing body an environmental assessment as prescribed in 76-3-603;

4 (c) establish procedures consistent with this chapter for the submission and review of subdivision  
5 applications and amended applications;

6 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

7 (e) provide for the identification of areas that, because of natural or human-caused hazards, are  
8 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the  
9 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures  
10 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not  
11 include building regulations as defined in 50-60-101 other than those identified by the department of labor and  
12 industry as provided in 50-60-901.

13 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year  
14 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

15 (g) prescribe standards for:

16 (i) the design and arrangement of lots, streets, and roads;

17 (ii) grading and drainage;

18 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet  
19 the:

20 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that  
21 will create one or more parcels containing less than 20 acres; and

22 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels  
23 containing 20 acres or more and less than 160 acres; and

24 (iv) the location and installation of public utilities;

25 (h) provide procedures for the administration of the park and open-space requirements of this chapter;

26 (i) provide for the review of subdivision applications by affected public utilities and those agencies of  
27 local, state, and federal government identified during the preapplication consultation conducted pursuant to  
28 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review  
29 may not delay the governing body's action on the application beyond the time limits specified in this chapter, and  
30 the failure of any agency to complete a review of an application may not be a basis for rejection of the application



1 by the governing body.

2 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider  
3 to:

4 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be  
5 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have  
6 a legal right to the water and reserve and sever any remaining surface water rights from the land;

7 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to  
8 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement  
9 administered through a single entity that specifies administration and the rights and responsibilities of landowners  
10 within the subdivision who have a legal right and access to the water; or

11 (iii) reserve and sever all surface water rights from the land;

12 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in  
13 the subdivision that:

14 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical  
15 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for  
16 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an  
17 irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision  
18 lots;

19 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance,  
20 and inspection of the ditch; and

21 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch  
22 easement without the written permission of the ditch owner.

23 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

24 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner  
25 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated  
26 land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable;  
27 or

28 (B) the water rights are removed or the process has been initiated to remove the water rights from the  
29 subdivided land through an appropriate legal or administrative process and if the removal or intended removal  
30 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the

subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or

agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604-;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 WORKING days following a decision by the governing body to ~~deny or conditionally~~ approve, CONDITIONALLY APPROVE, OR DENY a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications."

**Section 16.** Section 76-3-506, MCA, is amended to read:

**"76-3-506. Provision for granting variances.** (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement of this section."

**Section 17.** Section 76-3-507, MCA, is amended to read:

**"76-3-507. Provision for ~~bonding~~ security requirements to ensure construction of public improvements.** (1) Except as provided in ~~subsection~~ subsections (2) and (4), the governing body shall require the subdivider to complete required improvements within the proposed subdivision prior to the approval of the final plat.

(2) (a) In lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall at the subdivider's option allow the subdivider to provide or cause to be

provided a bond or other reasonable security, in an amount and with surety and conditions satisfactory to the governing body, providing for and securing the construction and installation of the improvements within a period specified by the governing body and expressed in the bonds or other security. The governing body shall reduce bond or security requirements commensurate with the completion of improvements.

(b) In lieu of requiring a bond or other means of security for the construction or installation of all the required public improvements under subsection (2)(a), the governing body may approve an incremental payment or guarantee plan. The improvements in a prior increment must be completed or the payment or guarantee of payment for the costs of the improvements incurred in a prior increment must be satisfied before development of future increments.

(3) Approval by the governing body of a final plat prior to the completion of required improvements and without the provision of the security required under subsection (2) is not an act of a legislative body for the purposes of 2-9-111.

(4) The governing body may require a percentage of improvements or specific types of improvements necessary to protect public health and safety to be completed before allowing bonding or other reasonable security under subsection (2)(a) for purposes of filing a final plat. The requirement is applicable to approved preliminary plats."

**SECTION 18. SECTION 76-3-510, MCA, IS AMENDED TO READ:**

**"76-3-510. Payment for extension of capital facilities.** (1) A local government may require a subdivider to pay or guarantee payment for part or all of the costs of extending capital facilities related to public health and safety, including but not limited to public roads, sewer lines, water supply lines, and storm drains to a subdivision. The costs must reasonably reflect the expected impacts directly attributable to the subdivision. A local government may not require a subdivider to pay or guarantee payment for part or all of the costs of constructing or extending capital facilities related to education.

(2) All fees, costs, or other money paid by a subdivider under this section must be expended on the capital facilities for which the payments were required."

**Section 19. Section 76-3-608, MCA, is amended to read:**

**"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary

1 plat, applicable environmental assessment, public hearing, planning board recommendations, or additional  
2 information demonstrates that development of the proposed subdivision meets the requirements of this chapter.  
3 A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts  
4 on educational services.

5 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as  
6 applicable.

7 (3) A subdivision proposal must undergo review for the following primary criteria:

8 (a) except when the governing body has established an exemption pursuant to subsection (6) of this  
9 section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture, agricultural  
10 water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and  
11 safety;

12 (b) compliance with:

13 (i) the survey requirements provided for in part 4 of this chapter;

14 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

15 (iii) the local subdivision review procedure provided for in this part;

16 (c) the provision of easements within and to the proposed subdivision for the location and installation  
17 of any planned utilities; and

18 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the  
19 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

20 (4) The governing body may require the subdivider to design the proposed subdivision to reasonably  
21 minimize potentially significant adverse impacts identified through the review required under subsection (3). The  
22 governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

23 (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under  
24 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is  
25 recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and  
26 will preclude approval of the subdivision.

27 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider  
28 and shall give due weight and consideration to the expressed preference of the subdivider.

29 ~~(6) The governing body may exempt proposed subdivisions that are entirely within the boundaries of~~  
30 ~~designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have~~

1 ~~been met:~~

2 ~~(a) the governing body has adopted a growth policy pursuant to chapter 1 that:~~

3 ~~—— (i) addresses the criteria in subsection (3)(a);~~

4 ~~—— (ii) evaluates the impact of development on the criteria in subsection (3)(a);~~

5 ~~—— (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and~~

6 ~~—— (iv) identifies one or more geographic areas where the governing body intends to authorize an exemption~~  
 7 ~~from review of the criteria in subsection (3)(a); and~~

8 ~~—— (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:~~

9 ~~—— (i) apply to the entire area subject to the exemption; and~~

10 ~~—— (ii) address the criteria in subsection (3)(a), as described in the growth policy.~~

11 ~~(7)(6)~~ A governing body may conditionally approve or deny a proposed subdivision as a result of the  
 12 water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604  
 13 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing  
 14 subdivision, zoning, or other regulations that the governing body has the authority to enforce."  
 15

16 **Section 20.** Section 76-3-609, MCA, is amended to read:

17 **"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application**  
 18 **-- governing body to adopt regulations.** (1) Minor subdivisions must be reviewed as provided in this section  
 19 and subject to the applicable local regulations adopted pursuant to 76-3-504.

20 (2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision  
 21 under this chapter or has not resulted from a tract of record that has had more than five parcels created from that  
 22 tract of record under 76-3-201 or 76-3-207 since July 1, 1973, then the proposed subdivision is a first minor  
 23 subdivision from a tract of record and, when legal and physical access to all lots is provided, must be reviewed  
 24 as follows:

25 (a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or  
 26 deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing  
 27 agent or agency that the application contains required elements and sufficient information for review. The  
 28 determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1)  
 29 through (3).

30 (b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the

1 review period, not to exceed 1 year.

2 (c) Except as provided in subsection ~~(2)(d)(iii)~~ (2)(d)(ii), an application must include a summary of the  
3 probable impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

4 (d) The following requirements do not apply to the first minor subdivision from a tract of record as  
5 provided in subsection (2):

6 (i) the requirement to prepare an environmental assessment;

7 ~~(ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and~~

8 ~~(iii)~~ (ii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor  
9 subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address  
10 the criteria in 76-3-608(3)(a).

11 (e) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent  
12 public hearing under 76-3-615 for a first minor subdivision from a tract of record as described in subsection (2).

13 (f) The governing body may adopt regulations that establish requirements for the expedited review of  
14 the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under  
15 the regulations:

16 (i) except as provided in subsection (2)(d), the provisions of 76-3-608(3); and

17 (ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

18 (3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not  
19 a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision  
20 and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and  
21 76-3-620.

22 (4) The governing body may adopt subdivision regulations that establish requirements for review of  
23 subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as  
24 provided in subsection (2) and this chapter.

25 (5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may  
26 occur only under those regulations in effect at the time that a subdivision application is determined to contain  
27 sufficient information for review as provided in subsection (2).

28 (b) If regulations change during the period that the application is reviewed for required elements and  
29 sufficient information, the determination of whether the application contains the required elements and sufficient  
30 information must be based on the new regulations."

1  
2       **Section 21.** Section 76-3-610, MCA, is amended to read:

3       **"76-3-610. Effect of approval of application and preliminary plat.** (1) Upon approving or conditionally  
4 approving an application and preliminary plat, the governing body shall provide the subdivider with a dated and  
5 signed statement of approval. This approval must be in force for not more than 3 calendar years or less than 1  
6 calendar year. At the end of this period the governing body may, at the request of the subdivider, extend its  
7 approval for no more than 1 calendar year, except that the governing body may extend its approval for a period  
8 of more than 1 year if that approval period is included as a specific condition of a written agreement between the  
9 governing body and the subdivider, according to 76-3-507.

10       (2) ~~After~~ Except as provided in 76-3-507, after the application and preliminary plat are approved, the  
11 governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat  
12 approval if the approval is obtained within the original or extended approval period as provided in subsection (1)."

13  
14       **Section 22.** Section 76-3-620, MCA, is amended to read:

15       **"76-3-620. Review requirements -- written statement.** In addition to the requirements of 76-3-604 and  
16 76-3-609, following any decision by the governing body to deny or conditionally approve a proposed subdivision,  
17 the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written  
18 statement that must be provided to the applicant, that must be made available to the public, and that:

19       (1) includes information regarding the appeal process for the denial or imposition of conditions;

20       (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose  
21 conditions and explains how they apply to the decision to deny or impose conditions;

22       (3) provides the facts and conclusions that the governing body relied upon in making its decision to deny  
23 or impose conditions and references documents, testimony, or other materials that form the basis of the decision;  
24 and

25       (4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before  
26 the final plat may be approved."

27  
28       **SECTION 23. SECTION 76-3-621, MCA, IS AMENDED TO READ:**

29       **"76-3-621. Park dedication requirement.** (1) Except as provided in 76-3-509 or subsections (2), (3),  
30 and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal



1 to:

2 (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

3 (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not  
4 larger than 1 acre;

5 (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger  
6 than 3 acres; and

7 (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger  
8 than 5 acres.

9 (2) When a subdivision is located totally within an area for which density requirements have been  
10 adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the  
11 governing body may establish park dedication requirements based on the community need for parks and the  
12 development densities identified in the growth policy or regulations. Park dedication requirements established  
13 under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling  
14 unit.

15 (3) A park dedication may not be required for:

16 (a) land proposed for subdivision into parcels larger than 5 acres;

17 (b) subdivision into parcels that are all nonresidential;

18 (c) a subdivision in which parcels are not created, except when that subdivision provides permanent  
19 multiple spaces for recreational camping vehicles, mobile homes, or condominiums; ~~or~~

20 (d) a subdivision in which only one additional parcel is created; or

21 (e) a first minor subdivision from a tract of record as described in 76-3-609(2).

22 (4) The governing body, in consultation with the subdivider and the planning board or park board that  
23 has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and  
24 consideration to the expressed preference of the subdivider, may determine whether the park dedication must  
25 be a land donation, cash donation, or a combination of both. When a combination of land donation and cash  
26 donation is required, the cash donation may not exceed the proportional amount not covered by the land  
27 donation.

28 (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use  
29 the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

30 (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its

jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) A local governing body may, at its discretion, require a park dedication for a subsequent minor subdivision as described in 76-3-609(3). A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

**Section 24.** Section 76-3-625, MCA, is amended to read:

**"76-3-625. Violations -- actions against governing body.** (1) A person who has filed with the governing body an application for a subdivision under this chapter may bring an action in district court to sue the governing body to recover actual damages caused by a final action, decision, or order of the governing body or a regulation adopted pursuant to this chapter that is arbitrary or capricious.

(2) A party identified in subsection (3) who is aggrieved by a decision of the governing body to approve, conditionally approve, or deny an application and preliminary plat for a proposed subdivision or a final subdivision plat may, within 30 days ~~after the~~ from the date of the written decision, appeal to the district court in the county in which the property involved is located. The petition must specify the grounds upon which the appeal is made.

(3) The following parties may appeal under the provisions of subsection (2):

(a) the subdivider;

(b) a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the county or municipality where the subdivision is proposed if that landowner can show a likelihood of material injury to the landowner's property or its value;

(c) the county commissioners of the county where the subdivision is proposed; and

(d) (i) a first-class municipality, as described in 7-1-4111, if a subdivision is proposed within 3 miles of its limits;

(ii) a second-class municipality, as described in 7-1-4111, if a subdivision is proposed within 2 miles of its limits; and

(iii) a third-class municipality or a town, as described in 7-1-4111, if a subdivision is proposed within 1 mile of its limits.

(4) For the purposes of this section, "aggrieved" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision."

**NEW SECTION. Section 25. Repealer.** Section 76-3-210, MCA, is repealed.

**NEW SECTION. SECTION 26. CODIFICATION INSTRUCTION.** [SECTION 6] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 76, CHAPTER 2, PART 1, AND THE PROVISIONS OF TITLE 76, CHAPTER 2, PART 1, APPLY TO [SECTION 6].

**NEW SECTION. Section 27. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. SECTION 28. APPLICABILITY.** [SECTIONS 15, 22, AND 24], CONCERNING ADOPTION OF REGULATIONS AND TIME REFERENCES IN THE REGULATIONS, APPLY UPON ADOPTION OF REGULATIONS UNDER [SECTION 15] OR ON MAY 1, 2010, WHICHEVER OCCURS FIRST.

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